

T7APB

May 30, 2003

**VIA FEDERAL EXPRESS**

**EXHIBIT**

Cheryl S. Goodman, Esq.  
Trademark Trial and Appeal Board  
United States Patent and Trademark Office  
2900 Crystal Drive  
Arlington, Virginia 22202-3514



06-02-2003

U.S. Patent & TMO/TM Mail Rpt Dt. #39

Re: Pucel Enterprises, Inc. v. Grizzly Industrial, Inc.  
Consolidated Opposition No. 123,506; Cancellation Nos. 31, 984; 32,024; and 32,025

Dear Ms. Goodman:

This is to reply to opposer's response of May 23, 2003 (Exhibit A), to the Board's Order dated May 6, 2003, requesting that the parties advise the Board of the resolution of any issues with respect to the motion to compel. Contrary to opposer's statements, the issues have not been resolved.

Opposer contends that any shortcomings in its responses to applicant's interrogatories and document requests "could have been investigated in the deposition of Pucel (Opposer)". The Federal Rules provide that each interrogatory shall be answered separately and fully in writing (FRCP 33(b)(1)). The Rules do not allow a party to unilaterally shift the burden of fully responding to an interrogatory to the proponent by requiring the proponent to seek full answers at a deposition.

Moreover, opposer's claim that at the deposition of Pucel "no question went unanswered" is not true. For example,

With respect to alleged instances of actual confusion, Bob Mlakar, one of the two 30(b)(6) witnesses, testified that Pucel sends responses to "confusion" letters, but he didn't know who at Pucel sent any such responses, he didn't know if copies of the responses were kept, and Pucel's attorney stated that "Tony Mlakar (the other 30(b)(6) witness) may be able to handle these actual confusion type questions better" (R. Mlakar Dep., pp. 26-27). When Anthony Mlakar was asked about whether he was involved in alleged confusion calls, he responded "No." (A. Mlakar Dep., pp. 15-16).

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When asked about printed publications that Pucel has advertised in, Pucel's 30(b)(6) witness was not able to fully respond, and admitted he was not aware of all publications in which Pucel advertises:

Q. Looking at that list, can you think of any printed publication that Pucel has advertised in other than what's listed here?

A. I don't specifically sign the contracts so I don't know all of them. If they are not here, I would not be aware of it. (B. Mlakar Dep., p. 108)

When asked questions about where Pucel's products are sold, the witness could not fully answer:

Q. So your products are shown in retail showrooms?

A. Some of them are, yes.

Q. Which showrooms?

A. I don't know all of them. (R. Mlakar Dep., p. 76)

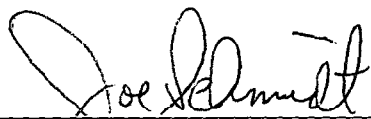
Excerpts from the deposition transcripts are attached as Exhibit B. It is quite obvious that Pucel could not answer all questions posed in the 30(b)(6) deposition, and did not.

**MICHAEL BEST  
& FRIEDRICH LLC**  
*Attorneys at Law*

May 30, 2003

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Opposer's positions as expressed in its letter of May 23, 2003, provide further support for applicant's motion to compel, i.e., there are unresolved issues so the motion is not moot. For the reasons set forth herein and in applicant's motion, applicant requests that its motion to compel be granted.



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**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the United States Postal Service as Via Federal Express in an envelope addressed to: Assistant Commissioner of Trademarks, 2900 Crystal Drive, Box TTAB NO FEE, Arlington, VA 22202

Date \_\_\_\_\_



Teresa L. Rivera

May 30, 2003

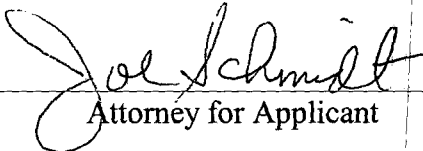
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Letter Addressed to the  
Trademark Trial and Appeal Board was served on defendant's counsel at the following address:

Kenneth L. Mitchell, Esq.  
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via first class mail, postage prepaid, this 30<sup>th</sup> day of May, 2003.

  
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May 23, 2003

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*VIA Fax, Confirmation By Mail*  
703-308-9333

Re: **Pucel Enterprises, Inc. v. Grizzly Industrial, Inc.**; Consolidated  
Opposition No. 123,506; Cancellation Nos. 31,984; 32,024; and 32,025.

Dear Ms. Goodman:

This is response to the Order dated May 6, 2003.

As stated in my April 29, 2003 letter the Fed. R. Civ. P., Rule 30(b)(6) deposition of Pucel Enterprises, Inc., manufacturer of Grizzly Equipment, was taken March 18, 2003. Two witnesses were produced and were available to answer any questions about documents or interrogatories which the Applicant/Respondent may have had.

Although Grizzly Industrial's counsel has represented in their May 16, 2003 letter that none of the issues have been resolved, it is through no fault of Pucel Enterprises, manufacturer of Grizzly Equipment. Any alleged shortcomings in the interrogatories and/or document requests could have been investigated in the deposition of Pucel Enterprises, Inc., manufacturer of Grizzly Equipment. No document has been withheld, no question went unanswered at deposition.

All documents referred to in footnote 1 of Pucel's Brief in Opposition to the motion to compel have been copied and forwarded to Grizzly Industrial's counsel.

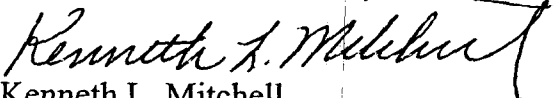
As Pucel sees it there are no unresolved issues in regard to the documents because no documents have been withheld and/or which have not been made available for inspection as they are kept in the ordinary and regular course of business. Further, in regard to the interrogatories, they have already been answered fully and any alleged shortcomings could and should have been investigated in the deposition of Pucel

Woodling, Krost and Rust  
Enterprises, Inc., manufacturer of Grizzly Equipment.

If you have any questions, please call.

Very Truly Yours,

Woodling, Krost and Rust

  
Kenneth L. Mitchell

Enc.

C: Mr. Joseph Schmidt, By Fax, 312-222-0818, Confirmation by mail  
KLM/krm

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- [1] A: When?
- [2] Q: Did you personally see Exhibit R-7 before I
- [3] showed you today?
- [4] A: I've seen items like this over a period of
- [5] years. Specifically I'm sure that I have, but I don't
- [6] look at the detail of it.
- [7] Q: Do you know if there was any response to this?
- [8] A: I don't know.
- [9] Q: Do you know who would handle that?
- [10] A: Typically if someone in the office would receive
- [11] it, as a courtesy, we would fax it back and say that
- [12] you're requesting — you're confused with the company,
- [13] this should not have been sent to us.
- [14] Q: Have you ever seen or signed any such letters?
- [15] A: No.
- [16] Q: Who signs those letters?
- [17] A: Someone in the office might just send it by fax.
- [18] They might not even sign it. They might just write
- [19] across that it's not ours.
- [20] Q: Do you know if you keep copies?
- [21] A: Some of them obviously like this. I'm sure they
- [22] wouldn't have kept all of them.
- [23] Q: Do you know if you keep copies of the responses?
- [24] A: That I'm not sure.
- [25] MR. SCHMIDT: Ken, do you know if

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- [1] you've produced any responses? There's a
- [2] number of these documents with no
- [3] responses.
- [4] MR. MITCHELL: No. I don't think
- [5] we have produced any responses.
- [6] Q: Can you look in your files and determine the
- [7] type of documents from Supply Depot that you think was
- [8] misdirected to Pucel?
- [9] A: Yes.
- [10] MR. MITCHELL: Tony Mlakar may be
- [11] able to handle these actual confusion type
- [12] questions better.
- [13]
- [14] (Exhibit Mlakar R-8 was
- [15] marked for identification.)
- [16]
- [17] Q: R-8 is document number 004. Can you identify
- [18] R-8, Mr. Mlakar?
- [19] A: Yes.
- [20] Q: And what is it?
- [21] A: It's one of our catalog request forms that
- [22] someone in the office had filled out and it was
- [23] obvious that they were looking for Grizzly Industrial,
- [24] but one of the people — what they did was if you're
- [25] interested in material handling, we'll send you a

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- [1] catalog and a price list and that's what they did and
- [2] it was sent on 10-18-2000.
- [3] Q: So at the bottom it's under new customer, how
- [4] did you hear about us?
- [5] A: Well, typically when someone asks for a catalog,
- [6] we try to see how our marketing — you know, some of
- [7] the areas, so what we do is we have them fill this in.
- [8] It's something we developed a number of years ago.
- [9] Q: Do you know if this was a phone request?
- [10] A: Yes, it was a phone.
- [11]
- [12] (Exhibit Mlakar R-9 was
- [13] marked for identification.)
- [14]
- [15] Q: Can you identify R-9? It's document number 005.
- [16] A: I thought it was mine at first. It's not mine.
- [17] I can tell by the model number. It's something from,
- [18] looks like, the Internet of a two-shelf cart.
- [19] Q: There's Jim on here, it says "Jim, this is the
- [20] cart we spoke about. Can you come up with anything?"
- [21] A: Jim is one of the people in our office. They're
- [22] probably talking about a Grizzly cart came to Grizzly
- [23] Equipment, Grizzly, and they didn't know what he was
- [24] talking about, or she, it looks like Melissa, and so
- [25] he probably said give me more information and so she

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- [1] faxed it over and said take a look at it.
- [2]
- [3] (Exhibit Mlakar R-10 was
- [4] marked for identification.)
- [5]
- [6] Q: You're looking at what's been marked as Exhibit
- [7] R-10. Can you identify it?
- [8] A: Yes.
- [9] Q: What is it?
- [10] A: It looks like a request for a quote from one of
- [11] our distributors who faxed us for equipment that was
- [12] not ours. She was obviously confused and sent it to
- [13] us instead of Grizzly Industrial because we're
- [14] referred to as Grizzly with them.
- [15] Q: Who is FindMRO.com?
- [16] A: It's actually a division that was Granger
- [17] Company.
- [18] Q: Did Pucel do business with Granger?
- [19] A: Yes.
- [20] Q: Does Pucel do business with FindMRO?
- [21] A: It's the same company. It was a division.
- [22] Q: Who is Matt Hauck, H-A-U-C-K?
- [23] A: I don't know who it is personally. Must have
- [24] been someone in purchasing.
- [25] Q: How long has Pucel done business with Granger?

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[1] A: I'd say in those early years, yes. I think it  
[2] was somewhere around \$20,000 a year that we were —  
[3] that their costs — same goods, but same goods were  
[4] advertised, same classifications, the catalog,  
[5] complete catalog was in place. So the prices were  
[6] less in those years, the cost of advertising.

[7] Q: And then —

[8] A: So I would say no more than 20 in those early  
[9] years.

[10] Q: Would a good part of the remainder be for  
[11] catalogs that you had printed up?

[12] A: There were catalogs, we did trade advertising,  
[13] display advertising.

[14] Q: What kind of trade advertising?

[15] A: In some of the publications, similar to that one  
[16] that you showed — Metal Working.

[17] Q: But not Metal Working?

[18] A: No. I don't remember ever advertising in there.

[19] Q: The notice of deposition — is that it?

[20] A: Yeah.

[21] Q: That's Exhibit R-1.

[22] A: R-1. Okay. Yes, I see they're listed.

[23] Q: Now you're looking at what page there?

[24] A: 3.

[25] Q: Page 3 under point number 15. Does this

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[1] represent the extent of your printed publication trade  
[2] advertising from '83 through 2001?

[3] A: It includes those. To the best of our knowledge  
[4] when we prepared this, those were the ads — or the  
[5] advertising that we did of those various publications  
[6] or directories.

[7] Q: These were all listed in your records?

[8] A: Yes.

[9] Q: And that's what you found?

[10] A: Yes. That's what we found.

[11] Q: You didn't find anything else?

[12] A: No.

[13] Q: Are you aware of any instances where anyone  
[14] purchased a product of Grizzly Industrial instead of  
[15] purchasing a Pucel product?

[16] A: No. There would be no way of knowing.

[17] Q: Are you aware of any instances where anyone  
[18] called or wrote to Pucel thinking that Pucel was  
[19] Grizzly Industrial?

[20] A: Yes.

[21] Q: How many instances did that happen?

[22] A: Well, I heard the question you asked and it  
[23] would be very difficult because we didn't accumulate  
[24] those as we have in this past couple of years. They  
[25] were coming in on a steady basis, but I couldn't even

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[1] say one a month or what, but we —

[2] Q: For how long has that been happening?

[3] A: More so in the last five, six years that we've  
[4] known about it.

[5] Q: Could you describe some of them to me? Is it a  
[6] phone call, a letter?

[7] A: Some were faxed to us, a lot of calls. More of  
[8] them would probably have been telephone calls.

[9] Q: Were you involved in any of those phone calls?

[10] A: No. I was just recently, just recently.

[11] Q: What happened?

[12] A: It was after five o'clock, I answered the phone,  
[13] someone asked for a particular product, "Are you the  
[14] Grizzly?" And I says "No, I'm not." They said,  
[15] "Well, we're looking for this" — well, they started  
[16] out saying they were looking for a saw, vacuum or dust  
[17] collector or something, I don't remember what it was,  
[18] and I just said, "No." I said, "We don't make that  
[19] and the company is using — that's our trademark" — I  
[20] think I said "That's our trademark and they're using  
[21] the same name." And I said, "I don't have the number  
[22] handy, but" — they said "That's all right. We know  
[23] who the other company is."

[24] So they apparently chose to choose us first to  
[25] find out who's handling this product. So that was

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[1] about two weeks ago and that's the only call that I  
[2] got myself fairly recently. I'm usually told about  
[3] these things after the fact, you know.

[4] Q: Apparently in all instances, but that one where  
[5] you answered the phone, you found out after the fact?

[6] A: That one made my day when I left at 10 after  
[7] 5:00. I should have left at five o'clock.

[8] Q: Is it fair to say that until your web site went  
[9] up, that Pucel's customer were industrial users?

[10] A: You know, industrial is a broad term.

[11] Industrial usually indicates factories, and maybe back  
[12] in the '50s factory use, you know, for heavy carts and  
[13] that, but over the years the business grew into  
[14] warehouses, large and small, storage facilities. They  
[15] might need handling goods, platform trucks to use the  
[16] goods. We used to sell lumber trucks directly through  
[17] distributors to the lumber companies. We still have —  
[18] I believe the lumber truck is in our catalog, that's  
[19] how that product developed. It went into lumber  
[20] stores, retail and wholesale.

[21] Q: So in the '50s, just to reiterate, in the '50s  
[22] it was factory? I'm trying to see —

[23] A: I would say it started out that way. They were  
[24] called industrial goods. When I hear the word  
[25] "industrial," it's kind of a broad word today. We say



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[1] two of them myself. I don't have an opportunity to  
[2] the phone as I would like.

[3] Q: Do you remember the one or two that you may have  
[4] taken directly?

[5] A: Just the confusion. I can't specifically.

[6] Q: I don't know what you mean when you say "just  
[7] the confusion."

[8] A: Well, what I'm saying is they were asking for a  
[9] product and I'll say, yes, this is Grizzly, but it's  
[10] not the product that you're asking for. And they go,  
[11] "Well, can you direct me to the product the dust  
[12] collector?" And then I always left it at that and  
[13] said "No," but I never pursued it or went any further.

[14] Q: What are Sianor products?

[15] A: They're light switch plates.

[16] Q: Is Sianor a Pucel trademark?

[17] A: Yes.

[18] Q: Is that a separate business of Pucel from  
[19] material handling?

[20] A: No. It's all part of it, part of the company.

[21] Q: Are Sianor products in the Pucel catalog?

[22] A: No. We have a separate catalog that we send for  
[23] that.

[24] Q: And those are light switch plates?

[25] A: Um-hmm.

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[1] Q: And you sell those under the Sianor trademark?  
[2] Am I saying it right, Sianor?

[3] A: Yeah. You're right. Sianor.

[4] Q: Now, prior to the Internet the past few years,  
[5] the focus of Pucel was on industrial users, correct?

[6] A: In years past.

[7] Q: In years — prior to the time that you went on  
[8] the Internet.

[9] A: That's hard to say because we didn't see all the  
[10] end users to that product.

[11] Q: Well, your target audience was certainly  
[12] industrial users, wasn't it, prior to the Internet?

[13] A: Industrial distributors we focused on, but like  
[14] I said, a distributor could sell to anybody they want  
[15] within their region or their district in which they're  
[16] selling.

[17] Q: Isn't it your understanding though that they  
[18] typically sell to industrial users?

[19] A: I don't have control over that. That's not a  
[20] concern of mine.

[21]  
[22] (Exhibit Mlakar R-17 was  
[23] marked for identification.)

[24]  
[25] Q: 17 does not have a document number because Mr.

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[1] Mitchell produced that today. Mr. Mlakar, I have put  
[2] in front of you Exhibit R-17.

[3] A: Yes.

[4] Q: And that is the front cover of Metal Working  
[5] Digest.

[6] A: Um-hmm.

[7] Q: Pucel does not advertise in Metal Working  
[8] Digest, does it?

[9] A: At this point we do not have any ad in it.

[10] Q: Has Pucel ever run an ad in Metal Working  
[11] Digest?

[12] A: Tony would have a better idea of that.

[13] Q: Not to your knowledge?

[14] A: We have publications we've been in similar to  
[15] this and I'm not sure specifically it's Metal Working  
[16] Digest. I can't answer yes on that.

[17] Q: Looking at Exhibit R-1, remember that list of —

[18] A: Yes.

[19] Q: Looking at that list, can you think of any  
[20] printed publication that Pucel has advertised in other  
[21] than what's listed here?

[22] A: I don't specifically sign the contracts so I  
[23] don't know all of them. If they are not here, I would  
[24] not be aware of it.

[25] Q: Okay. I'm just asking you are you aware.

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[1] A: No, I'm not.

[2] Q: You said you're not aware of any others that are  
[3] not listed here.

[4] A: That's correct.

[5] Q: Then I have at least one question for Tony.

[6]  
[7] (Exhibit Mlakar R-18 was  
[8] marked for identification.)

[9]  
[10] Q: To save some time, I'm going to mark a lot of  
[11] these catalogs that you brought and I just want you to  
[12] say that you can identify them and that it contains or  
[13] doesn't contain an ad of yours.

[14] A: Okay.

[15] Q: Unless you want me to ask the questions, but I  
[16] would assume —

[17] MR. MITCHELL: That's easier. You  
[18] can just give it to him, the same question.

[19] Q: There's a series here and I'm assuming some of  
[20] these are C&H, some are Global. I'd like to establish  
[21] that C&H is a distributor of yours —

[22] A: Yes.

[23] Q: — of Pucel. Global is a distributor?

[24] A: Yes.

[25] Q: And that these are pages from current or recent

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[1] A: No.  
[2] Q: Equipment buyers?  
[3] A: Not necessarily.  
[4] Q: What's your focus today with the catalog?  
[5] A: I like actual names. I prefer that method. I  
[6] don't like this method. So I —  
[7] Q: I'm not asking about the method on identifying a  
[8] general foreman, but the names, what type of positions  
[9] do the people hold that you're focusing sending the  
[10] catalogs to? I'm asking are they equipment buyers of  
[11] companies?  
[12] A: They could be. This is a little bit limiting.  
[13] Q: Can you list who you like to send catalogs to?  
[14] A: You might have people, but I prefer names in  
[15] themselves.  
[16] Q: I understand the names. These people hold jobs.  
[17] A: Right.  
[18] Q: What jobs do they hold?  
[19] A: I don't necessarily know what jobs they have  
[20] specifically. Might be an engineer, it could be a  
[21] foreman. It could be — I mean, it could be those  
[22] items, but not necessarily. This sort of puts people  
[23] into just a general category, into a box, whereas I  
[24] think today it's more open ended than something like  
[25] this.

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[1] Q: Who typically places orders from your larger  
[2] customers?  
[3] A: It varies. We have a broad range of customers  
[4] anywhere from customers that have things in their home  
[5] to people who have a smaller shop that just need a  
[6] cart or a workbench in their facility. Although some  
[7] of these might work, because even in a small place,  
[8] many times they — if you notice on any type of  
[9] literature that's sent out or advertising, in order to  
[10] get a book, you have to say what you are. Well, you  
[11] could be anything you want. You could have a  
[12] three-person shop and you're the manager, you're the  
[13] product manager. You could have — you know what I'm  
[14] saying? It doesn't matter. These catalogs would be  
[15] distributed to anyone.  
[16] Q: But they're typically plants in industrial  
[17] settings?  
[18] A: Back then possibly.  
[19] Q: Today for the most part isn't that the bulk of  
[20] your sales are to companies?  
[21] A: We sell to the company and the company has their  
[22] end user. Their end user could be anyone in their  
[23] area. It could be someone off the street. It could  
[24] be — I mean, they're going to sell to whoever they  
[25] want because some of the actual distributors have

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[1] retail stores where they have hand trucks of ours,  
[2] carts. I mean they actually show them in their  
[3] showroom so it could be anybody.  
[4] Q: So your products are shown in retail showrooms?  
[5] A: Some of them are, yes.  
[6] Q: Which showrooms?  
[7] A: I don't know all of them.  
[8] Q: Do you know any of them?  
[9] A: Yes.  
[10] Q: Can you name some?  
[11] A: Yes. Right down the street from us there's a  
[12] person who sells material handling and casters. They  
[13] have ours in the front of their office, their showroom  
[14] and part of that is our equipment.  
[15] Q: Any place outside of Cleveland?  
[16] A: Yes. On the West Coast there's a company that  
[17] actually has our equipment in their window as well and  
[18] sells it on a regular basis.  
[19] Q: And what type of — is this a retail  
[20] establishment —  
[21] A: Yes.  
[22] Q: — or warehouse?  
[23] What is the one in California?  
[24] A: What is it called?  
[25] Q: Yeah. I mean, you talk about a showroom or a

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[1] store.  
[2] A: It's just — their company is called Black, Inc.  
[3] I don't think it makes —  
[4] MR. MITCHELL: That's fine.  
[5] A: It's called Black, Inc. and they have a store  
[6] and actually is expanding into another retail store  
[7] where he has our stuff viewed in the storeroom so  
[8] those are people off the street.  
[9] Q: And he sells material handling equipment?  
[10] A: Not necessarily. He does and he doesn't. He  
[11] sells our industrial equipment, but he's using it for  
[12] a different function. That's what I was saying that  
[13] we have a broad range of customers. They're actually  
[14] putting our units and using them on — some of his  
[15] customers put their televisions on them because they  
[16] want that industrial look.  
[17] Those other two companies I was referring to  
[18] that are selling to the public, that's just a big  
[19] thing in New York now. In fact, a lot of our  
[20] equipment is even in showrooms in New York City. Very  
[21] popular.  
[22] Q: When you say "showrooms," are these street level  
[23] stores?  
[24] A: Yes.  
[25] Q: And how are your products getting into those